IN THE HIGH COURT OF UTTARTANCHAL
AT NAINITAL
Criminal Misc. Application No. 312/2005

Khoob Singh s/o Sri Ram Singh
R/o Village Phajapur,,Mandori,Police Station Nahtaur
District Bijnor,

Applicant.

Versus

1 State of Uttaranchal
Through Home,Secretary,
Uttaranchal Dehradun

2. Rajpal s/o Sri Nain Singh r/o/Bhandari Bagh
Vishvakarma Colony,
Police Station Kotwarli,District Dehradun.,

Opposite party

Hon'ble B.C. Kandpal, J

This application has been filed by the applicant for quashing the criminal proceedings in criminal case No. 633 of 20045 Rajpal Vs Devendra and other under sections 323,392,452,504, IPC pending before Judicial Magistrate, C.B.I, Dehradun.

Brief facts giving rise to this application are that a complaint was filed by the respondent / opposite party No.2 against the applicant and another stating therein that the applicant entered into the house of the complainant and thereafter assaulted the complainant with kicks and fists and hurled abuses as well as threatened for dire consequences. The statement under Section 200 Cr.P.C of respondent and that of the witnesses under Section 202 Cr.PC were recorded. The complainant also filed medical examination report.

The learned trial court vide order dated 15.5.2004 found that there was prima facie case against the applicant and proceedings under Sections 323, 392,452,504 and 506 I PC were made out and the Magistrate accordingly summoned the applicant and another.

Feeling aggrieved by the aforesaid impugned order, this petition has been filed by the applicant Khoob Ram

Heard Sh,.Vinod Sharma learned counsel for the applicant and the learned AGA for the opposite party and perused the record.

The learned counsel for the applicant has argued that the summoning of the applicant/accused in a criminal case is a serious matter , hence the criminal law cannot be set into motion as a matter of course. It has also been argued that the complainant does not disclose anywhere as to what was the place of occurrence. On the basis of complaint as well as statement of witnesses, the Magistrate has no jurisdiction to take cognizance in the matter.

In case, if the applicant /accused has any grievance that the learned Magistrate has no jurisdiction to take the cognizance in the matter than it will be open for the applicant /accused to file objection before the court below and raise the contention. The learned magistrate after taking into account the objection raised by the applicant shall pass an appropriate order. So far as the summoning order is concerned , I do not find any ground for interference at this stage as no detail reasons for summoning the accused/ applicant were needed.

The contention of the learned counsel for the applicant can be raised at the time o f trial in the court concerned as the trial court would be in a better position to settle the issue.. Therefore at this stage I do not find any ground for interference in the impugned order.

Accordingly the application is dismissed.

However, in case, if any objection is filed by the accused/ applicant before the court concerned, the Magistrate concerned shall decide the objection in the light of the amendment in the provisions of Section 202 Cr.P.C.

(B.C. Kandpal, J.)

12.9.2005
NBJ